

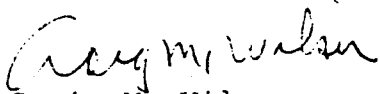
State of California

e m o r a n d u m

Date: JUL - 1 1993

To : John Adams, Jr.
Clean Water Programs

Department of Defense
Program Managers



Craig M. Wilson
Assistant Chief Counsel
OFFICE OF THE CHIEF COUNSEL

From : STATE WATER RESOURCES CONTROL BOARD
901 P Street, Sacramento, CA 95814
Mail Code: G-8

Subject: DEPARTMENT OF DEFENSE REQUESTS FOR APPLICABLE AND RELEVANT AND
APPROPRIATE REQUIREMENTS AT NON-NATIONAL PRIORITY LIST SITES

Recently many of you have received memoranda from either a Department of Defense (DOD) agency or from the Department of Toxic Substances Control (DTSC) requesting the Regional Water Quality Control Board (Regional Water Board) to identify applicable and relevant and appropriate requirements (ARARs) for non-National Priority List (non-NPL) DOD facilities. As I explained at our last DOD Roundtable, the State's legal position is that the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) concerning ARARs do not necessarily apply at non-NPL sites. Even if they do, they are not the only provisions that apply. However, DOD believes that they must comply with the ARAR provisions. Because they believe such provisions do apply, we have agreed to be cooperative and provide our requirements at the appropriate time in the CERCLA process. To help you respond to those requests, I have prepared a model response for your use at non-NPL sites (Attachment 1) and a model response for your use at NPL sites (Attachment 2).

Another issue in responding to ARAR requests at both NPL and non-NPL sites is that DOD often requests ARARs before there is sufficient information upon which specific requirements can be identified. I recommend that you respond in as much detail as possible, but make it clear to DOD that you cannot provide more detail until you receive appropriate information. You should review Remedial Investigation (RI) and Feasibility Study Workplans carefully to make sure that appropriate information will be collected to allow you to identify and establish

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requirements. For example, if soil contamination threatens ground water, the RI workplan should specify sufficient and appropriate sampling and analysis to enable the Regional Water Board to determine appropriate cleanup levels in soils to protect ground water. If the workplan is not sufficient, you should express your concerns in writing to DOD at the appropriate time, such as during your review of the draft document, and file a dispute if necessary.

It is especially important for the DOD Project Managers to work with me or their Regional Water Board attorney to discuss the appropriate response to requests for ARARs and to determine if there is a need to file a dispute. The Federal Facility Site Remediation Agreements (for non-NPL sites) and the Federal Facility Agreements (for NPL sites) limit the time to file disputes. Therefore, if a Regional Water Board Project Manager has significant concerns, those concerns should be raised as early as possible.

If you have any questions, please call Frances McChesney at (916) 657-2106, CALNET 8-437-2106.

Attachments

cc: Regional Water Board Attorneys
Barbara Evoy, OPE

MODEL REPLY
(NON-NPL ARAR Requests)

[DOD or DTSC person]
[Address]

Dear _____:

REQUEST FOR REGIONAL WATER BOARD REQUIREMENTS AT _____
FACILITY

On [date] we received your request that the Regional Water Quality Control Board's (Regional Water Board's) provide its applicable and relevant and appropriate requirements (ARARs) for [name of IR sites/OU's/?] at [name of facility] in compliance with Section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). As a preliminary matter, I want to point out that the State Water Resources Control Board and the Regional Water Board believe that CERCLA Sections 14 and 120(a)(4), not CERCLA Section 121(d), govern the application of state requirements at this facility, which is not listed on the National Priorities List. We recognize that the [Navy/Marine Corps/Air Force] believes that it is obligated to comply with CERCLA Section 121(d) and the National Contingency Plan (NCP) concerning ARARs. Therefore, in the spirit of cooperation and in response to your request, we are providing a list of Regional Water Board requirements that must be complied with or attained at this [facility/OU/IR site]. By responding to your request, however, we are not conceding that we are bound by the ARARs process or criteria specified in CERCLA and the NCP.

[Insert list of requirements and/or provide reasons why specific requirements cannot be identified at this time.]

Sincerely,

Title

cc: Regional Water Board Attorney
Other Project Managers for facility

MODEL REPLY
(NPL ARAR REQUESTS)

[DOD or DTSC person]
[Address]

Dear _____:

REQUEST FOR REGIONAL WATER BOARD ARARS AT _____
FACILITY

On [date] we received your request that the Regional Water Quality Control Board (Regional Water Board) provide its applicable and relevant and appropriate requirements (ARARs) for [name of IR sites/OU's/?] at [name of facility] in compliance with Section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

[Insert list of requirements and/or provide reasons why specific requirements cannot be identified at this time.]

Sincerely,

Title

cc: Regional Water Board Attorney
Other Project Managers for facility